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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/660,288

09/11/2003

Michael Zung

16497.138.1.1.2.1

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57360 7590 03/30/2010

WORKMAN NYDEGGER
1000 EAGLE GATE TOWER,
60 EAST SOUTH TEMPLE
SALT LAKE CITY, UT 84111

EXAMINER

MENDOZA, MICHAEL G

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

03/30/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/660,288	Applicant(s) ZUNG ET AL.	
	Examiner MICHAEL G. MENDOZA	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5,6,10-14,16-18 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,6,10-14,16-18 and 20-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/4/10</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1 3, 4, 6, 10-14, 16-18, 20-23 have been considered but are moot in view of the new ground(s) of rejection.
2. The applicant has amended the claims to include new limitations changing the scope of the claims.
3. Claim 7 has been canceled.
4. Claims 1, 3, 5, 6, 10-14, 16-18, and 20-23 are now pending.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3, 5, 6, 10-14, 16-18, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takamoto et al. 7063710 in view of Fogarty et al. 5584842.
7. Takamoto et al. teaches a suturing device comprising: a housing having a proximal end and a distal end (see. fig 1); a needle actuation handle (3 + 5) disposed at the proximal end of the housing; a movable handle (3 + 5); a shaft (1) at least partially disposed within a portion of the housing and extending distally from the distal end of the housing; and a needle movable within a needle lumen (see fig. 4) associated with the shaft and that extends toward a proximal end of the housing, the needle being attached to a length of suture, the needle (6) having a tapered tip, the tapered tip being initially

oriented toward the distal end of the housing. It should be noted that Takamoto et al. an opening disposed toward the distal end, a blade guard partially extending over the opening, and a stationary suture cutting blade positioned within the opening and beneath the blade guard, the stationary cutting blade having a V-shaped cutting edge (fig.14e).

8. Fogarty et al. teaches a device with a common opening disposed toward the distal end, a blade guard partially extending over the opening, and a stationary suture cutting blade positioned within the opening and beneath the blade guard (fig. 14f).

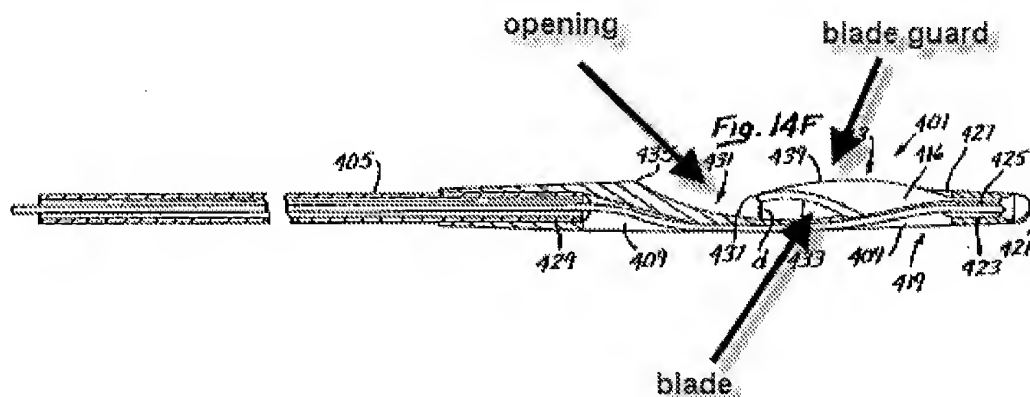
Takamoto et al. teaches the need of a cutting device to cut the suture when suturing is complete (col. 9, lines 1-3). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Takamoto et al. in view of Fogarty et al. to allow for cutting of excess suture material after suturing is complete.

9. Takamoto/Fogarty teaches wherein the movable handle is configured to deploy a foot (23); wherein the needle has a distal end and the suture is attached to the distal end of the needle (see figs., Takamoto).

10. Takamoto/Fogarty discloses the invention substantially as claimed except for various locations of the suture-cutting blade. However, In re Japikse held that claims that read on the prior art except with regard to the position of a claimed element were held unpatentable if shifting the position of the claimed element would not have modified the operation of the device. 181 F.2d 1019; 86 USPQ 70 (CCPA 1950). Simple

relocation of the suture-cutting blade does not modify the operation of the claimed device, but merely relocates the location of drawing the suture across the blade.

11. Takamoto/Fogarty discloses the claimed invention except for a removable needle actuation handle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the handle removable, since it has been held that constructing a formerly integral structure in various elements involves only routing skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.



Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is (571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/660,288
Art Unit: 3734

Page 6

/M. G. M./
Examiner, Art Unit 3734

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3734